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APPLICATION NO. 20	FILING DATE / 96	INVENTOR	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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C5M1/1007

EXAMINER TAYLOR, D

ART UNIT 3506	PAPER NUMBER
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DATE MAILED: 10/07/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/719,520

Applicant(s)
Mendes, J.

Examiner
Taylor, Dennis L.

Group Art Unit
3506



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-6 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-6 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 1, for example, the claim is directed to method steps of removal of spilled oil and like contaminants from the surface of a body of water. However, the claim is so interlaced with structural limitations that it is not clear what Applicant is attempting to define. The only method step set forth in the claim is "deploying a series of interconnected barriers in a circular state". The remainder of the claim is directed to structural features which are not method steps and are not required for the performance of any method step set forth in the claim. Structural limitations set forth in a method claim can only be given patentable weight when specific method steps depend on the recited structure for the method steps to be carried out.

Claims 2-6 are indefinite for reasons similar to those set forth above for claim 1. Also, it is noted that claim 2, for example, recite "a rotatable propeller for intermixing a multiplicity of polyolefin strands with one another". However, it is not clear what rotates the propeller when buried in the ground. Clarification is required.

This application contains claims directed to the following patentably distinct species of the claimed invention:

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I. The invention as set forth in claims 1, 3 and 5 for removal of spilled oil and like contaminants from the surface of a body of water;

II. The invention as set forth in claims 2, 4 and 6 directed to a method of sealing a polluted area containing a plume of subsurface pollutants.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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An art rejection has not been made on the claims at this time in view of the *In re Steele*, *Mills*, and *Leis* decision, 134 USPQ 292 which states:


Considerable speculation as to meaning of terms employed and assumptions as to scope of claims were made by examiner and Board; they were wrong in relying on speculative assumptions as basis for rejection under 35 U.S.C. 103; court is in a quandary as to what is covered by claims; substantial confusion as to interpretation of claims arose and has continued because claims do not particularly point out and distinctly claim invention as required by 35 U.S.C. 112; rejection is reversed because it is based on unsupported speculative assumptions; this is not to be construed as meaning that court considers claims to be patentable as presently drawn; claims should be reviewed to insure compliance with 35 U.S.C. 112.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Taylor whose telephone number is (703) 308-1013. The examiner can normally be reached on Monday through Thursday from 6:30 A. M. to 5:00 P. M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tamara Graysay, can be reached on (703) 308-2144. The fax phone number for this Group is (703) 305-3597 or 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.


DENNIS L. TAYLOR
PRIMARY EXAMINER
ART UNIT 3506

September 30, 1997
(8) 719520.1st